

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF INSURANCE

Frankfort, Kentucky

In Re: Kentucky Voluntary Market Advisory Loss Cost Filing KDOI # 124386 and Kentucky Voluntary Market Update to Retrospective Rating Plan Parameters Filing KDOI # 124387 submitted by the National Council of Compensation Insurance ("NCCI") proposing new loss cost indications for the voluntary worker's compensation market in Kentucky (as amended)

ORDER APPROVING A RATE OTHER THAN THAT REQUESTED

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WHEREAS, NCCI has submitted for approval proposed increases in loss costs for workers' compensation coverage in the voluntary market for the Commonwealth of Kentucky of 20.5% for non-coal classes, an increase of 3% for coal classes and an increase of 6.4% for "F" classifications, in filings identified by KDOI numbers 124386 and 124387, as amended, and

WHEREAS, the commissioner has reviewed the filings and accompanying supporting documentation, has taken testimony concerning the filings in a public hearing, and has been otherwise sufficiently advised,

NOW THEREFORE, the commissioner hereby DISAPPROVES the submitted loss costs for non-coal classes and, pursuant to KRS 304.13-051(8) APPROVES an amended overall revision to coal loss costs of 3% and APPROVES an overall revision for "F" classifications of 6.4%.

In coming to the decision to approve a rate other than the one requested for non-coal classes, the commissioner considered all the data available to her which was obtained from NCCI, the Department of Worker's Claims ("DWC"), a public hearing, and presentations made to a public meeting of the Interim Labor and Industry Committee, as well as follow-up documents from both NCCI and the DWC.

Bearing this in mind, the commissioner has considered this information and the major factors supporting an increase were:

1. Increased medical losses due to rising medical costs and increased utilization: While the number of claims is declining and the payment of indemnity benefits (lost wages) is not steeply increasing, historical medical claims experience substantiate rising medical costs and increased utilization. Managed care costs have remained flat but enrollees have declined from 41% in 1998 to 30% in 2002. Additionally, the role of the Kentucky workers' compensation hospital and prescription fee payment schedule and other fee schedules which operate to balance the need to assure quality medical care with reasonable cost containment for consumers are allowing a pass through of cost increases. Therefore, the net effect of a rise in cost coupled with decreased participation in managed care programs results in increased medical costs.

2. Data suggests that the impact of HB 992 was more than anticipated as total system costs have increased for the last two years. Total system costs (evaluated by calendar year) increased 14.74% in 2001 and another 10.34% in 2002.

3. On an overall basis, the original estimated impact of the new edition of the AMA guidelines for evaluating percentages of disability was minimal; however, the observed impact has proven to be much greater. This means that disability ratings for some injuries or disease processes are higher for cases evaluated under the new 5th edition than these same injuries or diseases would have been under the 4th

edition. These higher disability ratings of necessity lead to higher awards to claimants who suffer from the specific injuries or diseases more highly rated by the 5th edition.

4. Attorney participation is increasing. The total attorney fees approved (for plaintiff's attorneys) increased from \$13,015,082 in fiscal year 2000 to \$21,833,569 in fiscal year 2003.(per DWC data)

While the facts support an increase, the commissioner must balance the stability of the market with responsiveness to changing conditions while avoiding overreacting to changes in the data due only to random noise and not an actual change in conditions. For the non-coal classes, the paid loss development factors have, in general, shown increases for the past few evaluations. This filing reflects these changes by selecting paid loss development factors based on an average of the two most recent points for each development interval, giving more weight to responsiveness. The Department of Insurance reviewed the paid loss development factors based on an average of the three latest points for each evaluation, and a five- year average excluding the highest and lowest point respectively, giving more weight to stability. The five-year loss development alternative is preferred by the commissioner which yields an impact far less than 20.5%. After careful consideration of the full range of alternative impacts which are each actuarially supported, the commissioner has arrived at a confluence of the two-year (as filed) and the five-year evaluations to arrive at the final non-coal impact of 13.1%. Twenty-five percent (25%) weight has been given to the filed indicated need and the remaining seventy-five percent (75%) to the five- year alternative. Therefore a loss cost of 13.1% is hereby APPROVED for the non-coal classes.

Done and effective this __12th__ day of __September__, 2003

____/s/ Janie A. Miller_____

Janie A. Miller, Commissioner

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Order was served by fax and certified mail, postage prepaid upon Natasha Gonzalez, NCCI, 212 Snake Hill Road, Trussville, Alabama 35173 on this the _____ day of September, 2003.

Vicky C. Horn

Attorney

Kentucky Department of Insurance